

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: William Y. Sun

Appeal No. \_\_\_\_\_

Serial No.: 10/729,973

Group Art Unit: 3739

Filed: 12/09/2003

Examiner: Flanagan, Beverly Mende

For: **TONGUE STABILIZER FOR LARYNGOSCOPE BLADE**

\* \* \* \* \*

**AMENDED APPEAL BRIEF**

\* \* \* \* \*

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Enclosed is an Amended Appeal Brief in response to the Examiner's New Grounds of Rejection after receipt of an Appeal Brief. It includes a 31 page Brief and Fee Transmittal, Transmittal and Notice of Appeal Forms.

It is requested that the Examiner's Answer be filed and this case be forwarded to the Board of Appeals so that an unbiased evaluation of the patentability of the claims can be made.

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Honorable Members of the Board of Patent Appeals and Interferences:

The jurisdiction of the Board is invoked under 35 USC 134 and 37 CFR 1.191 and 37 CFR 41.31. A Notice of Appeal is filed herewith. Both the Notice of Appeal and the Amended Appeal Brief are timely filed. The appeal fees were previously paid and are requested to be applied against this Amended Appeal Brief.

This Amended Appeal Brief is filed in response to the Examiner's New Ground's of Rejection dated 2/22/2006, filed in response to your applicant's Appeal Brief filed 12/08/2005.

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**i. Real Party of Interest**

The real party of interest is your appellant, William Y. Sun, whose mailing address is:  
205 Yoakum Parkway #623, Alexandria, VA 22405.

**ii. Related Appeals and Interferences**

There are no known pending applications that are related to this application.

**iii. Status of Claims**

Claims 1-17 are in this application.

Claims 1 and 8 are rejected under 35 USC 102(b) as being anticipated by the brochure or publication of Panduit.

Claims 2 - 7 and 9 - 17 contain allowable subject matter, but are objected to as being dependent upon a rejected base claim.

**iv. Status of Amendments**

There are no pending amendments in this application.

**v. Summary of Claimed Subject Matter**

Independent claim 1 is to “a tongue stabilizer for a laryngoscope blade.” The claimed tongue stabilizer is best seen in Fig. 3 with the stabilizer shown in Fig. 4 attached to a laryngoscope blade 11. The tongue stabilizer of claim 1 has a tongue engaging plate 13 (page 4,

line 14 - page 5, line 8), a foam strip support 10, for the plate 13 (page 5, lines 9 - 17), and a pressure sensitive adhesive 12 for attachment (page 5, lines 13 - page 6 line 2).

**vi. Grounds of Rejection to be Reviewed on Appeal**

Whether claims 1 and 8 are anticipated under 35 USC 102(b) by Panduit.

**vii. Arguments**

Claims 1 and 8 are not anticipated by Panduit.

The claim rejections are clearly improper and in violation of well established patentability principles. The publication to Panduit does not even disclose a tongue stabilizer or anything else for use on or with a laryngoscope blade.

**STRUCTURE CLAIMED**

**Claim Preamble**

Base independent claim 1 sets forth, with emphasis added, in the preamble:

“A tongue stabilizer for a laryngoscope blade.”

**Claim 1 Combination of Elements**

The body of claim 1, and all other claims with emphasis added, sets forth in pertinent part:

- a) a tongue-engaging plate . . . ;
- b) a foam strip support . . . top surface attached to said tongue engaging plate bottom surface  
. . . between said forward end and said rear end and between said first side and said second side;
- c) a pressure sensitive adhesive . . . extending along said foam support bottom surface, and a  
bottom surface available for attaching said tongue stabilizer to a laryngoscope blade.

## **THE STRUCTURE AND TEACHINGS OF PANDUIT**

The Panduit publication teaches:

- A. Page 1, under the upper left picture, states that a fast easy-to-use ABM 1 - 12 adhesive backed cable tie mount is used.
- B. Page 2, first paragraph, states that foam type pressure sensitive adhesive is used to mount wire bundles to smooth surfaces. Two types of “double-coated polymeric foam adhesive tape are available.”
- C. Page 2, second paragraph, states that Panduit offers “two standard pressure sensitive foam tapes” available on most adhesive backed wiring accessory products.” The rubber based tape “develops its strength extremely fast.”
- D. Page 2, third paragraph, states that the acrylic based adhesive takes a longer time to develop maximum strength than the rubber based adhesive. An 8 hour dwell time is recommended.

E. Page 2, fifth paragraph, states that to use the foam tape, the release liner is removed, the mounts are positioned and firm pressure is applied for 5 seconds after which the mount is allowed to dwell.

### **REJECTION SHORT-COMINGS**

Claim 1 is drawn to “a tongue stabilizer for a laryngoscope blade.” There are three basic components:

- A. A tongue-engaging plate;
- B. A foam strip support;
- C. A pressure-sensitive adhesive.

The foam strip is in between the plate and pressure sensitive adhesive, with a pressure sensitive adhesive on the bottom surface for attachment to a laryngoscope blade.

The Panduit Publication does not anticipate claims 1.

- i. The Panduit Publication does not teach a tongue stabilizer for a laryngoscope blade.
- ii. The Panduit Publication does not teach a tongue-engaging plate.
- iii. The Panduit Publication does not teach a “foam strip” per se or one between a plate and a pressure sensitive adhesive or one as a support under a plate.
- iv. The Panduit Publication does not teach a pressure-sensitive adhesive outer or bottom surface for adhering a plate to a laryngoscope blade or anything else.

A summary of Panduit can be made that a double-coated polymeric foam adhesive tape is used to adhere a mount. The mount itself is shown as a flat base having raised wire enclosing projections, an obviously molded nylon article, for permanently positioning wires, cables, etc., to a smooth surface. Four or five embodiments are shown in the page 1 pictures. Adhering the mount requires thumb (or other) pressure for 5 seconds followed by up to 8 hours “dwell” to attain maximum strength adherence.

- i. The Panduit Publication is to securing wires. The wires pass through protrusions extending over the only structure appearing to be a “plate.”
- ii. The Panduit Publication “plate” has protrusions sticking up from the “plate” that would prevent a tongue from engaging the “plate” or from being stabilized by the “plate.”
- iii. The Panduit Publication teaches an adhesive “tape” supporting the “plate.”
- iv. The Panduit Publication permanently adheres the “plate” to a smooth surface using what is called a “double-coated polymeric foam adhesive tape.” There is no disclosure of the specific structure of the tape. It is not disclosed if the tape is a base material having a coating on both sides (3 thickness), or if the resulting tape combines the materials to form a single thickness tape. It is not disclosed what makes up a “foam” adhesive tape or what its structure is. It is not known if the double coating is to one side of the tape or to both sides. In any event, there is no “pressure sensitive adhesive” used to secure the plate to a surface.

## Claim 1 Rejection

A. Claim 1 is drawn to “a tongue stabilizing plate for a laryngoscope blade.” It is necessary that the tongue engaging plate be firmly adhered to a laryngoscope blade. By using a small but reasonably thick foam strip the stabilizer plate can be firmly secured to a variety of different size and shape laryngoscope blades. The “Panduit” publication is to an “Adhesive Backed Cable Tie Mount.” The mount, as diagramed on the second page, requires a surface to be cleaned, then dried, then the “release liner” is removed, then thumb pressure is applied for at least 5 seconds, then it is allowed to dwell for up to 8 hours.

B. Claim 1 requires “a tongue-engaging plate.” The Examiner has not specifically identified either the element or element of an embodiment or plate that constitutes “a tongue-engaging plate.” A plate is provided to engage and stabilize the tongue while using a laryngoscope blade. There is no tongue stabilizing plate for a laryngoscope blade disclosed by Panduit. Panduit shows several embodiments of plates that are to have adhesive tape placed on a bottom surface. The top surfaces of these plates are not capable of supporting a tongue because their top surface has wire securing projections molded or attached to them. The outer surfaces of these moldings are not shown supporting anything and are not disclosed to support anything and are not designed to support anything. The projections enclose and secure wires. The projections preclude a tongue from ever reaching the “plate,” or the “plate” from being a stable support for a tongue. There is no structure disclosed by Panduit that could be used to stabilize a tongue. It is inconceivable that the tongue of a patient would be inserted within the wire holding mounts of

Panduit to stabilize it. The structure would be more able to secure a tongue if the protrusions were sharp pins that penetrated the tongue like a skewer.

For the tongue to be supported by the “plate” upper surface requires a modification of the “mount” in that the molded structures on the “plate” upper surface would have to be removed. Without this modification the “mount” upper molding structure would do damage to any tongue placed on it and would divert the tongue off of the “mount” rather than stabilizing it.

C. Claim 1 requires “a foam strip support ... top surface attached to said tongue engaging plate bottom surface.” A foam strip support is positioned between the tongue-engaging plate and the pressure-sensitive layer. Panduit teaches: “Two types of double-coated polymeric foam adhesive tape ...” (page 2, first paragraph). These tapes extend on the bottom surface of what is understood to be smooth-surface engaging “plates.”

The structure of the tape is so broadly disclosed that any evaluation of it would be pure speculation.

D. Claim 1 also requires “a pressure-sensitive adhesive having a top surface, attached to and extending along said foam support bottom surface, and a bottom surface available for attaching said tongue stabilizer to a laryngoscope blade.” A pressure-sensitive adhesive extends along both the foam support bottom surface and the outer lower surface. The deformable foam

strip facilitates the pressure-sensitive adhesive attachment of the “plate” to a variety of laryngoscope blades.

For a U.S. patent application to be acceptable, it must comply with 35 USC 112. It must be clear and definite enough to be understood and reproduced. Your applicant contends that Panduit, among other things, has no pressure sensitive adhesive base. Panduit does state that: “pressure sensitive adhesive (foam tape) mounts are intended to secure wire bundles or other light objects to smooth surfaces.”, and: “Two types of double-coated polymeric foam adhesive tape are available.” However, thumb pressure must be applied for 5 seconds and, as set forth in the third paragraph on page 2: “We recommend that acrylic adhesive mounts dwell 8 hours after installation prior to loading.” After this “fixing” is complete, wires are inserted within the mount as shown in the pictures on the first page (top left and four embodiments along the bottom of the page).

Your applicant contends and cannot believe that any adhesive that must be held in place for 5 seconds, to position it, and then is required to “dwell” for up to 8 hours, before use, is a pressure sensitive adhesive. Can you imagine delaying an intubation procedure for 8 hours when less than a minute can result in serious brain damage due to oxygen deprivation? An adhesive that is not instantly adhered on pressure contact with a surface is not a pressure sensitive adhesive.

By definition, pressure sensitive adhesives “adhere to most surfaces with very slight pressure.” They “form viscoelastic bonds that are aggressively and permanently tacky; adhere without the need of more than finger or hand pressure, and require no activation by water, solvent or heat.” “The substrates to be bound must be aligned perfectly on the first pass, as the application of the adhesive will result in an immediate bond.” (Emphasis Added)

GLOBALSPEC - The Engineering Search Engine. (Copy Enclosed)

It is seriously doubted that there is any pressure sensitive adhesive present in Panduit in view of the totality and inconsistency of the disclosure. Since it is mentioned, the most that can be assumed is that an “upper” one of the two “double-coated polymeric foam adhesive tape” surfaces may be a pressure sensitive adhesive. The double coating could also reasonably be interpreted to be two coatings on one surface. The “bottom” coating as claimed, certainly is not a pressure sensitive adhesive.

The structure disclosed by Panduit is too indefinite to use it to reject claims under 35 USC 102 or 35 USC 103. The placement and extent of the adhesive and foam, and anything else that may or may not be present, are a mystery. A rejection cannot be sustained based on possibilities, and certainly is improper when based on a disclosure that is inherently inconsistent and fails to disclose the specific structure being claimed.

## REJECTION LEGAL SHORT-COMINGS

### Claims 1 and 8 Rejections

The Examiner has rejected claims 1 and 8 based on Panduit under 35 USC 102(b). Panduit does not anticipate the invention claimed.

Panduit is not a valid anticipation reference.

1. The publication is indefinite.
2. The publication has an insufficient disclosure.
3. The publication is to a non-analogous art.
4. The publication structure does not anticipate Claim 1.
5. The claim preamble precludes a valid 35 USC 102 rejection.
6. The Examiner has failed to make out a *prima facie* case.
7. The Examiner's personal opinions are not a valid substitution for facts and evidence.
8. The claim and reference wording has been misconstrued or ignored.
9. The simplicity of an invention cannot be an excuse to reject a claim.
10. Problems addressed by the claims and the references must be the same
11. The rejection is obviously a hindsight rejection.

#### **1. The Publication is indefinite**

Panduit is not a definite valid reference. Claim 1 uses words that are consistent with

standard definitions while the Panduit publication is too structurally confusing to be used as a valid reference as set forth above. (See D above, pages 10 - 12. )

The tape, foam structure and pressure sensitive adhesive, disclosure of Panduit are inconsistent and indefinite both structurally and functionally. It has been held that claims depending on a special meaning of ordinary words are indefinite; in re Waldie, 76 USPQ 55 (CCPA 1947); and that claims depending on words having determinate meanings are indefinite; In re Jolly, 80 USPQ 504 (CCPA 1949). Words and terms that are too indefinite to support a claim, cannot be used to reject that claim.

## **2. The Publication Has an Insufficient Disclosure**

The disclosure of Panduit is not clear enough to support the present claim structure. (See D above, pages 10 - 12.)

A disclosure is inadequate if the invention is impossible to define; In re Dense, 70 USPQ 212 (CCPA 1946); and a disclosure must do more than merely suggest that one skilled in the art might construct the device; In re Richardson, 62 USPQ 150 (CCPA 1944).

The structure disclosed by Panduit could not adequately support the structure of claim 1 and is thus not sufficient to reject it under 35 USC 102 or 35 USC 103.

### **3. The Publication is to a Non-Analogous Art**

The Panduit publication addresses art that is non-analogous to the claimed invention. A permanent, stationary support for positioning and enclosing wire on a mount is not analogous to a temporary tongue stabilizing support on a laryngoscope blade.

For the teachings of a reference to be prior art, there must be some basis for concluding the reference would have been considered by one skilled in the particular art working on the pertinent problem to which the invention pertains. For no matter what a reference teaches, it could not have rendered obvious anything, “at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains,” unless said hypothetical person would have considered it. In re Horn, Horn, and Horn, 203 USPQ 969 (CCPA 1979).

Determination of non-analogous art is two-fold: first, court decides if reference is within field of inventor’s endeavor; if it is not, court proceeds to determine whether reference is reasonably pertinent to particular problem with which inventor was involved. In re Wood and Eversole, 202 USPQ 171 (CCPA 1979). The publication of Panduit fails both of these tests. It is not analogous to the claimed invention as it involves a different field of endeavor and it addresses an entirely different problem.

### **4. The Publication Structure Does not Anticipate Claim 1**

There is no anticipation by the Panduit publication.

To constitute an appropriate rejection under 35 USC 102(b) requires that the disclosure or prior patents be read unaided by teachings of the subject matter which they are alleged to anticipate. Technical Tape Corp. V. Minnesota Mining and Mfg. Co., 110 USPQ 160 (D.C.S.D. NY 1957). There can be no 35 USC 102 anticipation unless all of the same elements are found in exactly the same situation and united in the same way to perform identical functions as a single prior art reference. Corometrics Medical Systems v. Berkeley Bio-Engineering, 193 USPQ 467 D.C.N.D. Calif. 1977); Johnson & Johnson v. Gore & W.L. Gore & Assoc., 195 USPQ 487 D.C. Del. 1978); Scott v. Inflatable System, 222 USPQ 460 (9<sup>th</sup> Cir. 1983). The present rejection does not do this.

Panduit has no tongue supporting plate, no foam strip supporting such a plate, and no pressure sensitive adhesive for temporarily attaching such a plate to a laryngoscope blade.

The Examiner has failed to specifically identify the elements in the claims and to specifically identify the corresponding elements in the reference. Anticipation requires the presence in a single prior art reference of each and every element of the claimed invention arranged as in the claim, and the trier of fact must identify the elements of the claims, determine their meaning in light of the specification and identify corresponding elements disclosed in the alleged anticipation reference. 37 CFR 1.106(b); Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co. et al, 221 USPQ 481, (CAFC 1984); In re Mullins, Wetherby and Chevalier, 179 (USPQ 97 (CCPA 1973). This has not been done.

Panduit shows various structures for his wire securing article. None are tongue supports or capable of securing a tongue. A foam adhesive tape with no disclosure as to what constitutes the foam adhesive tape and a disclosure of an adhesive that is not pressure sensitive, does not anticipate a “foam strip” or a “pressure sensitive” adhesive or tongue stabilizing plate in combination.

#### **5. The Claim Preamble Precludes a Valid 35 USC 102 Rejection**

The Panduit publication is to permanently positioning wires to a surface by enclosing the wires between protrusions.

The claim 1 preamble calls for “a tongue-engaging plate for a laryngoscope blade.” The claim includes “a tongue-engaging plate”; “a foam strip ... with said foam top surface attached to said tongue engaging plate.” and “a bottom surface ... for attaching said tongue to a laryngoscope blade.” In Panduit there is no “tongue-engaging plate.” There is no “foam strip” engaging the tongue-engaging plate. There is no “pressure sensitive adhesive” for attaching to a laryngoscope blade.

The Court of Customs and Patent Appeals has long reminded the Patent Office that all statements contained in any part of the claim, including the preamble, are to be considered as important and worthy of consideration when an Examiner deliberates patentability. In re Duva, 156 USPQ 90 (CCPA 1967). As here, when a preamble is essential to understanding the claim

itself, the relevant prior art is limited. Freund Industrial Co. V. Driam Metall Product GmbH Co., 12 USPQ 2d 1641 (DCSNY 1989).

The preamble is a part of the claim and assists in defining the invention and scope of the claims. The purpose set forth in the claims is more than a mere statement of purpose, it is essential to particularly point out the invention defined by the claims. The limitations appearing in the preamble are necessary to give meaning to the claim and properly define the invention. In re Bullock, 203 USPQ 17 (CCPA 1979); Perkin-Elmer Corp. v. Computervision Corp., 22 USPQ 669 (FedCir) cert. Denied 469 U.S. 857 (1984). While the preamble is not normally considered part of the claim, it is deemed part of the claims where necessary to breath “life and meaning” into the claims. Corning Glass Works v. Sumitomo Electric USA, 868 F2d 1251 (Fed Cir. 1989). This is especially true when the body of the claim includes and references preamble recitations as is the case here.

As stated by the Federal Circuit: a court charged with claim construction must construe the preamble and the remainder of the claim as one unified and internally consistent recitation of the claimed invention, when the preamble is not merely a statement describing the invention’s intended field of use but instead is intimately meshed with the ensuing language in the claim. The first appearance of terms in the claim body in this case could only be understood or discerned in the context of the preamble’s use of those terms. Pitney Bowes v. Hewlett Packard, 51 USPQ 2d 1161 (CAFC 1999).

## 6. The Examiner has Failed to Make Out a *Prima Facie* Case

The purposes and functions of the Panduit publication are different from those claimed.

The Examiner has failed to make out a *prima facie* case of obviousness. The structure of the device of Panduit is not capable of supporting a tongue. The upper surface is irregular and shaped to hold cables or wires in a permanent position between upstanding protrusions.

The rejection cannot be sustained when the prior art is simply incapable of functioning as required by the claims and achieving what is achieved by the invention. When this situation exists, the Examiner has failed to make out a *prima facie* case. Ex parte Gould, 231 USPQ 943 (BdApp 1986).

If the prior art teaches away from the claimed invention then it cannot support a *prima facie* rejection. U.S. v. Adams, 148 USPQ 479 (USSC 1966). The permanent securing of cables using elevated securing means cannot be construed to be the same as a temporary support for a tongue on a laryngoscope blade.

The mere fact that the prior art can be modified does not make the modification obvious or establish *prima facie* obviousness unless the prior art suggests the desirability of the modification. In re Gordon, 221 USPQ 1125 (CAFC 1984).

## **7. The Examiner's Personal Opinions are not a Valid Substitution for Facts and Evidence**

The claims have not been rejected by the actual teachings of Panduit. It appears that the examiner has glanced at the reference and “intuitively” interpreted real and imaginary and non-existent structure to exist there.

The Examiner has rejected the claims based on what must be considered to be personal opinions rather than facts of record disclosed by Panduit. Even the criteria for obviousness have not been met. The mere allegation that there are no differences between the claimed subject matter and the prior art does not create a presumption of anticipation which forces an applicant to prove conclusively that the Patent Office is wrong. In re Soli, 137 USPQ 797 (CCPA 1963). The ultimate legal conclusion of obviousness (or anticipation) must be based on facts or records, not on the examiner's unsupported allegation that a particular structure exists. Subjective opinions are of little weight against contrary evidence. In re Wagner et al, 152 USPQ 552 (CCPA 1967). To assign attributes to a reference that do not, in fact, exist, and to entirely discount the critical language within the claim, no matter how subtle, does not comply with the requirements of objectively identifying the differences between the claimed invention and the prior art. Graham v. John Deere, 148 USPQ 459 (USSC 1966), In re Wood and Everrole, 202 USPQ 17 (CCPA 1979). The Court of Appeals for the Federal Circuit has stated that even the Board must point to some concrete evidence in the record to support their findings. In re Zurko, 258 F.3d 1379 (FedCir 2001).

## **8. The Claim and Reference Wording has been Misconstrued or Ignored**

All words of a claim must be considered in judging the patentability of a claim against the prior art. In re Miller, 169 USPQ 597 (CCPA 1971). A term in a claim is to be given a construction consistent with the ordinary and customary meaning of the term and the intrinsic evidence from the patent itself. Hill-Rom v. Kinetic Concepts & KCI Therapeutic Servs., 54 USPQ 2d 1437 (CAFC 2000); Cortland Line v. Orvis, 53 USPQ 2d 1734 (CAFC 2000).

The requirements of a claim cannot simply be ignored. In re Ehhreich et al, 200 USPQ 504 (CCPA 1979) and must be considered material absent external evidence suggesting otherwise. Ontario Die of America v. Independent Die, 18 USPQ 2d 1477 (DCE Mich 1990); In re Boe, 184 USPQ 38 (CCPA 1974); Ex parte Murphy & Burford, 217 USPQ 479 (BdApp 1982).

The Examiner having assigned attributes to the references which do not in fact exist and entirely discounting the critical language within the claims does not comply with the Graham requirement of objectively identifying the differences between the claimed invention and the prior art. Graham v. John Deere, 148 USPQ 459 (USSC 1966); In re Wood and Everrole, 202 USPQ 12 (CCPA 1979).

## **9. A Claim is not Rejectable Because of Simplicity**

Rumors are getting out that some examining areas are under instructions to reject all simple and broad claims regardless of available art. That is contrary to well established law. As

stated by the U.S. Supreme Court, the simplicity of the invention is not evidence of obviousness, it is evidence of unobviousness. Goodyear Tire v. Ray-O-Vac, 60 USPQ 3·86 (USSC 1944).

This concept is so firmly established that the MPEP 706.03(d) includes that, in a mechanical case, the breadth of the claim permitted is determined only by the prior art.

#### **10. Problems Addressed by the Claims and the References Must be the Same**

The prior art must address and provide the inventor's answer to the particular problem confronting an inventor. In re Winslow, 151 USPQ 48 (CCPA 1966). The relationship between the problem the inventor was attempting to solve and the problem to which any prior art reference is directed is highly relevant. Stanley Works v. McKinney Mfg. Co, 216 USPQ 298 (Del DC 1981); In re Luvisi and Nohejl, 144 USPQ 646 (CCPA 1965).

Where references are not directed to the problem solved by an applicant and only applicant's specification suggests any reason for combining the teachings of the prior art, it is improper to select statements from references and combine them to arrive at applicant's claimed combination. In re Pye and Peterson, 148 USPQ 426 (CCPA 1966); In re Stephens et al 145 USPQ 656 (CCPA 1965).

#### **11. The Rejection is Obviously a Hindsight Rejection**

The present rejection is a classic example of a hindsight rejection. The interpretation and modification proposed to the Panduit publication can only be based on hindsight as there

certainly is no teaching within the publication to make the interpretations and modifications proposed by the Examiner. Only the present disclosure and claim suggest the structural reconstruction made to Panduit. There is seen to be no difference between modifying the structure disclosed by one reference and modifying the structures disclosed by two references to reject a claim.

It is not permissible to ascertain factually what was done and then view the prior art in such a manner as to select from random facts which may be modified and utilized to reconstruct the invention. Application of Shumann, 316 F2d 100 (CCPA 1966).

More than an opinion or speculation and hindsight are required to reach a legal conclusion of obviousness. In re Sporck, 133 USPQ 360 (CCPA 1962). A combination rejection must be supported by something other than applicant's own disclosure. In re Shaffer, 108 USPQ 326 (CCPA 1956). To imbue one of ordinary skill in the art with knowledge of the invention, when no prior art reference or references of record suggest that knowledge is hindsight where that which only the inventor taught is used against its teacher. W.L. Gore & Associates v. Gorlock Inc., 220 USPQ 303 (CAFC 1983); In re Harry Sponnoble, 160 USPQ 237 (CCPA 1969).

The use of appellant's disclosure in reconstruction of references to meet claims is even barred under 35 USC 103 as obviousness must be tested at the time the invention was made; and, claims are allowable when the only source which would leave a person of ordinary skill to make

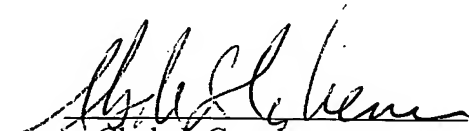
the last step in reconstruction is appellant's disclosure, In re Pavlecka, 138 USPQ 152 (CCPA 1963).

The Examiner's interpretation of Panduit can only be the result of hindsight. Panduit does not anticipate claims 1 and 8.

## CONCLUSION

Claims 1 and 8 are patentable over Panduit and are in condition for allowance. The decision of the Examiner rejecting claims 1 and 8 under 35 USC 102(b) based on the newly applied Panduit reference should be reversed. Such action is earnestly solicited.

Respectfully submitted



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## Claims Appealed

## 1. A tongue stabilizer for a laryngoscope blade comprising:

a tongue-engaging plate having a top surface, a bottom surface, a forward end, a rear end, a first side, a second side and a central area;

a foam strip support having a top surface and a bottom surface with said foam top surface attached to said tongue engaging plate bottom surface between said forward end and said rear end and between said first side and said second side;

a pressure-sensitive adhesive having a top surface, attached to and extending along said foam support bottom surface, and a bottom surface, available for attaching said tongue stabilizer to a laryngoscope blade.

## 8. A tongue stabilizer for a laryngoscope blade as in claim 1 wherein:

a protective covering on said pressure-sensitive adhesive bottom surface to protect it from contamination.

ix.

## EVIDENCE APPENDIX

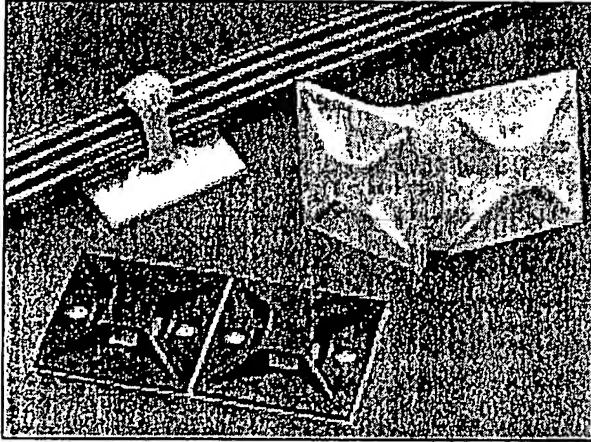
### Evidence Relied On

The publication to or brochure of Panduit (1999, 2 pages) relied on by the Examiner.

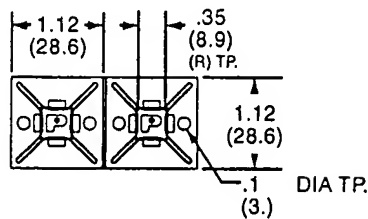
Definition of pressure-sensitive adhesive by GLOBALSPEC, The Engineering Search Engine (1 page).



## Product Bulletin



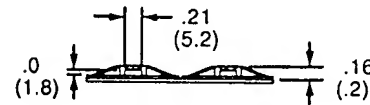
Lower your installed costs with the fast, easy-to-use **PANDUIT** ABM112 adhesive backed cable tie mount. It features a four-way bridge for fast and easy cable tie insertion.



## ABM112 Adhesive Backed Cable Tie Mount

### Provides Many Benefits

- Direct cross from competitive mounts
- Increased static load rating over ABM2S
- Simple to install — "2-Up" configuration speeds adhesive liner removal
- Nylon construction provides increased flammability rating
- Mounts with rubber based tape are suitable for use on powder coated surfaces



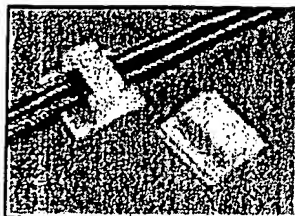
### Ordering Information

Part Number	Used With Cable Ties*	Where Used	Material and Color	Max. Static Load lbs. (g)	Adhesive Type†	Packaging**			
						Std. Pkg. Qty.	Std. Ctn. Qty.	Bulk Pkg. Qty.	Bulk Ctn. Qty.
ABM112-A-C	M,I,S	Indoors	White Nylon	.63 (286)	Rubber	100	500	500	5000
ABM112-A-C14	M,I,S	Indoors	Gray Nylon	.63 (286)	Rubber	100	500	500	5000
ABM112-A-C15	M,I,S	Indoors	Beige Nylon	.63 (286)	Rubber	100	500	500	5000
ABM112-AT-C	M,I,S	Indoors	White Nylon	.63 (286)	Acrylic	100	500	500	5000
ABM112-AT-CO	M,I,S	Outdoors High Temp.	Black Nylon	.63 (286)	Acrylic	100	500	500	5000

\*M = Miniature, I = Intermediate, S = Standard Cross Section

\*\*Parts shown for Std. Pkg. Qty's. Order number of mounts required in multiples of Std. Pkg. Qty.

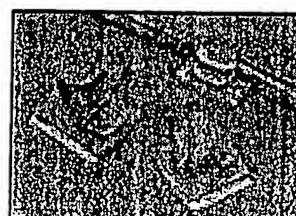
### Other New Adhesive Backed Mounts from Panduit . . .



Bevel entry clips



Vertical cord clips



Latching wire clips



Low profile flat cable mounts

### Part of a Complete Line of Accessories

# PANDUIT® ABM112 Adhesive Backed Cable Tie Mount

## General Mount Guidelines

**PANDUIT** pressure sensitive adhesive (foam tape) mounts are intended to secure wire bundles or other light objects to smooth surfaces. These mounts are not designed to support excessive loads and should not be used when the maximum expected load exceeds the rated capacity of the mount. Two types of double-coated polymeric foam adhesive tape are available. Rubber based type, the most widely used and generally recommended; and acrylic based type, the better choice for outdoor and higher temperature applications.

## Choosing the Right Adhesive

Panduit offers two standard pressure sensitive foam tapes which are available on most adhesive backed wiring accessory products. The general purpose tape is produced with a rubber based adhesive and is identified by a "-A" in the part number. This tape develops its strength extremely fast and can be used in environments with temperatures ranging from -20°F to +120°F. Rubber based adhesive tape is the best choice for most adhesive mount applications, including powder coated surfaces.

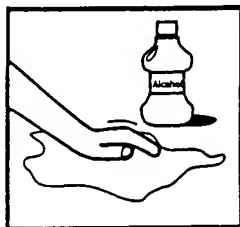
The second tape available is produced with an acrylic based adhesive, and is identified by a "-AT" in the part number. This tape is for use in environments where continuous exposure to temperatures as high as 180°F is possible. Acrylic based adhesive develops its maximum strength over a longer period of time than rubber based adhesive. We recommend that acrylic adhesive mounts dwell 8 hours after installation, prior to loading. Acrylic based adhesive tape is a good choice for environments with prolonged exposure to UV rays or temperatures above 120°F.

## Surface Preparation

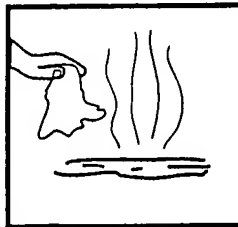
For best results, **PANDUIT** adhesive mounts should be applied to clean, dry, grease-free surfaces. We recommend that for each application a cleanser be used to thoroughly prepare the surface prior to mount installation. For rubber and acrylic based foam tape adhesives, isopropyl alcohol may be used to clean most surfaces.

## Proper Installation Techniques For Pressure Sensitive Adhesive Mounts

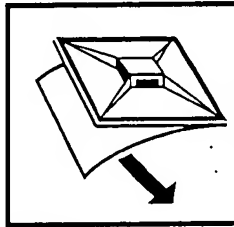
For proper installation of adhesive mounts with foam tape, simply remove the release liner and place the mount in the desired location. Avoid touching the adhesive prior to positioning the mount. Apply firm pressure to the mount for 5 seconds to insure proper adhesion.



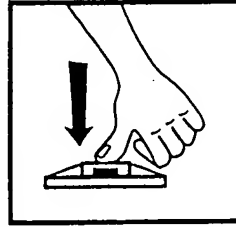
Clean surface with a clean cloth and isopropyl alcohol.



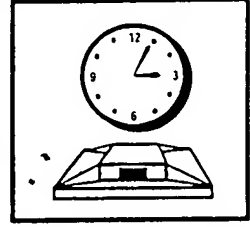
Allow surface to air dry.



Remove the release liner, being careful not to touch the adhesive.



Apply full thumb pressure for at least 5 seconds.



Allow mount to properly dwell.

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Pressure sensitive adhesives (PSA) and contact adhesives adhere to most surfaces with very slight pressure. They are available in solvent and latex or water based forms. Pressure sensitive adhesives and contact adhesives are often based on non-crosslinked rubber adhesives, acrylics or polyurethanes. Pressure sensitive adhesives form viscoelastic bonds that are aggressively and permanently tacky; adhere without the need of more than a finger or hand pressure; and require no activation by water, solvent or heat. Pressure sensitive adhesives are often based on non-crosslinked rubber adhesives in a latex emulsion or solvent-borne form.

Pressure sensitive adhesives and contact adhesives are available in a wide variety of chemical compositions or systems. Some of the most common types of systems include acrylic and methacrylate adhesives, rubber-based pressure sensitive adhesives, styrene copolymers (SIS / SBS), and silicones. Acrylic adhesives are known for excellent environmental resistance and fast-setting time when compared with other resin systems. Acrylic pressure sensitive adhesives often use an acrylate system. Ethylene ethyl acrylate (EEA) or ethylene methyl acrylate (EMA) copolymers are used to form hot melt PSA adhesives. Natural rubber, synthetic rubber or elastomer sealants and adhesives can be based on a variety of systems such as silicone, polyurethane, chloroprene, butyl, polybutadiene, isoprene or neoprene. Rubber and elastomers are characterized by their high degree of flexibility and elasticity (high reversible elongation). Styrene-isoprene-styrene (SIS) and styrene-butadiene-styrene (SBS) copolymers are commonly applied in pressure sensitive adhesive applications. Silicone is produced through the hydrolysis and polymerization of silanes and siloxanes.

Pressure sensitive adhesives and contact adhesives are available in a variety of bond strengths. Some styles are aggressive and permanent. The substrates to be bound must be aligned perfectly on the first pass, as the application of the adhesive will result in an immediate bond. Other types of pressure sensitive adhesives and contact adhesives are removable or allow for repositioning without leaving adhesive on the substrate or delaminating part of the substrate.

Related keywords:

1. pressure sensitive adhesive, acrylonitrile butadiene styrene, contact adhesive, styrene monomer, adhesive rubber, poly styrene, butadiene styrene, adhesive contact paper, adhesive based pressure sensitive silicone, contact adhesive paper, acrylic polyurethane, pressure sensitive styrene, pressure sensitive adhesive paper, styrene acrylonitrile, monomer MSDS styrene

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There are no known related proceedings.

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